

1979 WL 42944 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 19, 1979

*1 Cary S. Griffin, Esquire
Attorney at Law
Post Office Box 5010
Hilton Head Island, South Carolina 29928

Dear Mr. Griffin:

In response to your request for an opinion from this Office concerning the condemnation powers of the Broad Creek Public Service District (District), I agree with your conclusion that Section 4(13) of Act No. 1739 of 1972 [57 STAT. 3405 (1972)] empowers the District Commission to exercise the power of eminent domain of any corporate function pursuant to the provisions of [Sections 57-5-310 et seq., CODE OF LAWS OF SOUTH CAROLINA](#), 1976, or of Sections 28-5-10 [et seq., CODE OF LAWS OF SOUTH CAROLINA](#), 1976.

I do not think that the provisions of [Section 6-11-130 of the 1976 Code](#) have any effect on the District Commission's condemnation powers inasmuch as Act No. 1739 of 1972, the District's organic act, specifies the two alternative procedures available to the District Commission for the purpose of condemnation and those two alternative procedures do not include that provided for by [Section 6-11-130 of the 1976 Code](#). Moreover, that Code Section relates only to special purpose districts created pursuant to Chapter 11 of Title 6 and the District was, as you know, created by special legislation. Finally, in response to your inquiry as to whether or not the District Commission is authorized to condemn property outside the District if such action is necessary for its water distribution and/or sewage treatment systems, there is no provision in Act No. 1739 which either expressly or impliedly grants it such authority. In fact, the only provisions of that Act of which I am aware which speak to powers exercisable within or without the District are those authorizing the District Commission to interconnect water and utilities systems between districts [§ 4(16)] and to own or lease real estate 'whether or not physically located within the districts [*id.*]. Cf., § 4(23) and § 4A of Act No. 1739 of 1972. Moreover, the State Highway Department's authority to condemn property 'as may be necessary . . . , for the construction, maintenance, improvement or safe operation of highways in this State' [[§ 57-5-320, CODE OF LAWS OF SOUTH CAROLINA](#), 1976] cannot, in my opinion, be used *mutatis mutandis* by the District because it is a power possessed solely by the State Highway Department and because that Department's territorial jurisdiction, unlike that of the District, is State-wide.

With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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